

avoid the consequences of an untimely filing. This circuit, as well as other circuits, have not recognized an actual innocence exception to the statute of limitation. Allen v. Yukins, 366 F.3d 396, 404 (6th Cir. 2004); see also Flanders v. Graves, 299 F.3d 974, 977-978 (8th Cir. 2002); Gildon v. Bowen, 384 F.3d 883, 887 (7th Cir. 2004). Thus, petitioner's claim of actual innocence, in and of itself, is not sufficient to toll the statute of limitation. In any event, the petitioner has not provided the type of clear and convincing evidence needed to sustain his claim of actual innocence.

Accordingly, given the untimeliness of the petition, the petition is DENIED and this action is hereby DISMISSED. Rule 4, Rules - - - § 2254 Cases. Having failed to make a substantial showing of the denial of a constitutional right, a certificate of appealability shall NOT issue in this instance. 28 U.S.C. § 2253(c)(2).

It is so ORDERED.



Robert L. Echols
United States District Judge